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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 597

HAROLD P. BALLF,
Petitioner,

vs.

THE PUBLIC WELFARE DEPARTMENT OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, and RONALD H. BORN, director thereof, and THE CIVIL SERVICE COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, and individual members thereof, FRANCIS P. WALSH, WILLIAM A. LAHANIER, and CHARLES T. McDONOUGH, and THE RETIREMENT BOARD OF THE CITY AND COUNTY OF SAN FRANCISCO EMPLOYEES' RETIREMENT SYSTEM, and IRA G. THOMISON, secretary thereof,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION
on Petition for a Writ of Certiorari
to the District Court of Appeal,
State of California.

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Subject Index

	Page
Citations to opinions below	2
Jurisdiction	2
Question presented	3
Statutes involved	3
Statement	4
Reasons for denying the writ	5
Discussion of reasons for denying the writ	6
First. There is no Federal question of law involved	6
Second. The existence of a Federal question of law was never at any time urged or framed by petitioner in the State courts	7
Third. The decisions of the State courts are based upon State law and do not circumvent Public Law No. 346, nor any provision of the Federal Constitution	7
Conclusion	8

Table of Authorities Cited

Cases

Pages

Corcoran v. San Francisco etc. Retirement System, 114 C.A. 2d 738, 251 P. 2d 591 1

Kubach v. McGuire, 199 C. 215, 248 P. 276 6

La Prade v. Dept. of Water & Power, 27 C. 2d 47, 162 P. 2d 13 6

Charters

Charter of the City and County of San Francisco:
- Section 7 ..... 3, 7
- Sections 153 and 154 3

Constitutions

Constitution of the United States:
- Article V 2
- Article IX 2, 6
- Article XIV 2
- Article XIV, Section 1 6

Rules

Rules of the Civil Service Commission of the City and County of San Francisco, Rule 31.3 ..... 3, 4

Statutes

Public Law 346, 58 Stat. 284, 78th Congress, Servicemen's Readjustment Act of 1944 ..... 2, 6, 7

28 U.S.C. 1257 (2) and (3) 7

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CITATIONS TO OPINIONS BELOW.

Respondents have no quarrel with the statements of petitioners as to the opinions below (pages 2-3 Petition).

JURISDICTION.

This case at no time revolved around any federal law. It was tried exclusively on the theory of law that a municipality has the power under its charter to prescribe the residence requirements of its employees and the rules that it could adopt relative to leaves of absence for these same employees. An examination of paragraphs VI to VIII of the original petition before the trial court (R.T. p. 70) shows that at no time did the petition refer to Public Law 346, 58 Stat. 284, 78 Congress, Servicemen's Readjustment Act of 1944, nor to any other federal law.

Furthermore, the right sought to be enforced by the petitioner is not covered in any way by any of the protective provisions of Articles V, IX and XIV of the Constitution of the United States.

The oral arguments referred to by petitioner on page 4 of his petition are not a part of this record and in this regard respondents are positive that no argument was made at any stage of the proceeding of the trial or the appeal that a federal question was involved. An examination of the opinion of the District Court of Appeal for the First District, State of California, shows that at no time does it refer to any federal statute (Appendix B, pages vii to xv peti-

tioner's petition.) Petitioner alludes to the footnote in the opinion at page xiii as indicating that the court did have in mind a federal question when it decided this case. However, the two cases referred to in the footnote dealt only with the question as to the jurisdiction of an appeal court on the question of mandamus to a quasi judicial board under State of California statutes and decisions.

QUESTION PRESENTED.

Whether the judgment by a state trial court, affirmed by a state appellate court, on the question of a disciplinary action taken against an employee by a municipal corporation under the provisions of its charter and the rules of its Civil Service Commission, presents any federal question to this Honorable Court on certiorari.

STATUTES INVOLVED.

Charter Sections 7, 153 and 154 of the Charter of the City and County of San Francisco Appendix A, pages i, ii, iii, attached to petitioner's petition, and Rule 31.3 of Rules of the Civil Service Commission of the City and County of San Francisco, Appendix A, page v, attached to petitioner's petition.

STATEMENT.

Harold P. Ballf, while on leave of absence designated as educational leave from his employ by the City and County of San Francisco, gave up his residence and abode in the City and County of San Francisco and moved to Contra Costa County. He registered to vote in Contra Costa County and cancelled his registration in the City and County of San Francisco (R.T. 33-35). When he applied for a new educational leave of absence, the Civil Service Commission of the City and County of San Francisco, who has the authority to approve or disapprove educational leaves of absence (Rule 31.3 Appendix A, page v petitioner's petition) informed the head of the department in which he was employed that petitioner had lost his residence in San Francisco and that it would not pass upon his application for leave (R.T. 23, lines 10-12).

Subsequently, the department head informed the petitioner that the leave had not been approved (R.T. 24, lines 14, 21). Charges were then preferred against the petitioner on September 21, 1953 on three counts: (1) insubordination; (2) loss of residence; and (3) violations of terms of education leave (R.T. 19, lines 10-26).

A public hearing was conducted on these charges, at which the petitioner appeared and personally represented himself. At the conclusion of the hearing he was found guilty and ordered discharged. Pursuant to the provisions of the Charter of the City and County of San Francisco petitioner appealed this de-

cision to the Civil Service Commission, which affirmed the finding of the department head.

Following his dismissal petitioner filed a suit in the Superior Court of the State of California in and for the City and County of San Francisco, No. 440196 (R.T. 1-13) and issue was joined by return and answer of the respondents (R.T. 14-16). After a hearing thereon judgment was entered for respondents (R.T. 70). From this judgment the petitioner appealed in the District Court of Appeal of the State of California, First District (R.T. 72) and after briefs were filed and oral argument made, the District Court of Appeal affirmed the judgment of the trial court in its opinion (Appendix B, pages vii to xv, petitioner's petition). The Supreme Court of California refused to grant the petitioner's hearing thereafter (Petitioner's Appendix B, page xvi).

REASONS FOR DENYING THE WRIT.

Respondents respectfully point out to this Honorable Court the following reasons why the issuance of the writ sought should be denied, and will discuss them in detail below:

First. There is no question of federal law involved.

Second. At no time, if any federal question is involved, did the petitioner frame the question during the proceedings in the trial court or raise it during appeal.

Third. The decision of the state court follows the law of the State of California and interprets the

Charter of the City and County of San Francisco and Rules of the Civil Service Commission thereof and, in no way, circumvents Public Law 346, nor deprives the petitioner of any rights under Article XIV, Section 1 of the Constitution of the United States nor is it in violation of Article IX of the Constitution of the United States.

DISCUSSION OF REASONS FOR DENYING THE WRIT.

FIRST. THERE IS NO FEDERAL QUESTION OF LAW INVOLVED.

From the facts previously stated by the respondents, the only point of law that the California court was called upon to determine was whether or not there was substantial evidence in the record to support the finding of the appointing officer of the City and County of San Francisco's Public Welfare Department, in his determination that petitioner had lost his residence, as defined under the charter of the City and County of San Francisco (*La Prade v. Dept. of Water & Power*, 27 C. 2d 47 [162 P. 2d 13]; *Corcoran v. San Francisco etc. Retirement System*, 114 C.A. 2d 738 [251 P. 2d 59]). This decision of the trial court and opinion of the appellate court were based entirely on state statutes and cases interpreting these statutes. The provisions of a charter of a city adopted pursuant to the constitution of the State of California is a state statute. *Kubach v. McGuire*, 199 C. 215, 217, 248 P. 276.

SECOND. THE EXISTENCE OF A FEDERAL QUESTION OF LAW WAS NEVER AT ANY TIME URGED OR FRAMED BY PETITIONER IN THE STATE COURTS.

Starting with the petition for writ of mandate filed by the petitioner (R.T. pages 3-11) to the opinion of the District Court of Appeal (Appendix B, pages vii to xv, petitioner's petition), the petitioner's sole argument was that he had not lost his residence under the provisions of section 7 of the Charter of the City and County of San Francisco (Appendix A, pages i, ii and iii petitioner's petition). The language of the prayer to the petition in the trial court (R.T. p. 10, line 16 to p. 11, line 7) clearly demonstrates the theory upon which petitioner brought this action and the relief that he was seeking from it. All of the pleadings and the transcript of the proceedings indicate that at no time did the petitioner rely upon any federal law or raise any federal question as to the relief he was seeking. Accordingly this Honorable Court has no jurisdiction to grant the writ of certiorari (28 U.S.C. 1257 [2] and [3]).

THIRD. THE DECISIONS OF THE STATE COURTS ARE BASED UPON STATE LAW AND DO NOT CIRCUMVENT PUBLIC LAW NO. 346, NOR ANY PROVISION OF THE FEDERAL CONSTITUTION.

The opinion of the District Court of Appeal is predicated upon the right of respondent City and County of San Francisco to define what residence is required of its employees. The judgment affirmed by the appellate court is based entirely upon a question of fact, the existence of substantial evidence to

support the finding of the department head who ordered the petitioner's dismissal. The decision of the trial court and the opinion of the District Court of Appeal were based on a finding of fact that there was sufficient evidence to support the order of the executive officer of the respondent Public Welfare Department of the City and County of San Francisco.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be denied.

Dated, San Francisco, California,
December 9, 1957.

Respectfully submitted,
DION R. HOLM,
City Attorney of the City and County of San Francisco,
Attorney for Respondents.

BERNARD J. WARD,
Deputy City Attorney of the City and County of San Francisco,
Of Counsel.